

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK**

INTERNATIONAL CODE COUNCIL,  
INC. and AMERICAN SOCIETY OF  
CIVIL ENGINEERS,

Plaintiffs,

v.

UPCODES, INC.; GARRETT REYNOLDS;  
and SCOTT REYNOLDS,

Defendants.

UPCODES, INC.,

Counterclaim-Plaintiff,

v.

INTERNATIONAL CODE COUNCIL, INC.,

Counterclaim-Defendant.

Civil Action No. 1:17-cv-6261-JFK

**ECF Case**

Hon. John F. Keenan  
Courtroom: 20C

**DEFENDANT AND COUNTERCLAIM-PLAINTIFF UPCODES, INC.'S  
COUNTERCLAIM**

UpCodes, Inc., by and through its undersigned counsel, brings this counterclaim against International Code Council, Inc., and alleges as follows:

### **PARTIES**

1. Counterclaim-Plaintiff UpCodes, Inc. (“UpCodes”) is a corporation organized and existing under the laws of Delaware, which lists its principal place of business at 108 West 13th Street, Wilmington DE 19801.

2. Upon information and belief, Counterclaim-Defendant International Code Council, Inc. (“ICC”) is a not-for-profit corporation organized under the laws of the State of California, with its principal place of business in Washington, D.C.

### **JURISDICTION AND VENUE**

3. This Court has subject matter jurisdiction over this counterclaim under 28 U.S.C. § 1338(a) and 28 U.S.C. § 2201.

4. This Court has personal jurisdiction over ICC because ICC submitted to such jurisdiction for purposes of this counterclaim by filing the underlying case against UpCodes in this District.

5. Venue is proper in this district under 28 U.S.C. § 1391 and § 1400 because a substantial part of the events giving rise to this counterclaim, including the filing of the underlying case against UpCodes, occurred in this District.

### **FACTS**

6. UpCodes operates the UpCodes service, located at <https://up.codes>.

7. UpCodes helps the Architecture, Engineering, and Construction (“AEC”) industry deliver buildings that comply with building codes and other laws.

8. UpCodes provides tools to manage building codes, avoid project delays, and clarify requirements.
9. UpCodes allows its users to search for relevant building codes and other relevant laws, on a per-jurisdiction basis.
10. UpCodes shows its users an integrated view of the law. It presents the law as adopted by particular jurisdictions, including amendments or modifications to model codes that jurisdictions have chosen to adopt.
11. UpCodes provides collaborative tools for collaboration, bookmarking, and commenting on the law.
12. Some material accessible on UpCodes also appears in one or more ICC publications. This material is referred to herein as the “Posted Laws.” All of this material carries the force of law in one or more jurisdictions.
13. None of ICC’s “value-added” material, such as commentary that does not carry the force of law, is accessible on UpCodes.
14. None of the Posted Laws are model codes presented as model codes, but instead are presented on UpCodes as the laws of particular jurisdictions.
15. The Posted Laws were created for incorporation into law.
16. ICC made affirmative efforts to encourage one or more jurisdictions to incorporate the Posted Laws into the laws of that jurisdiction.
17. The Posted Laws were incorporated into law in one or more jurisdictions.
18. The Posted Laws are laws of general applicability in one or more jurisdictions.
19. One or more jurisdictions impose criminal penalties for violating the requirements of the Posted Laws.

20. The authentic exposition of the law, binding on every citizen, is free for publication to all.

21. A real and substantial controversy exists between the parties regarding the subject matter of this counterclaim because ICC has brought a claim for copyright infringement against UpCodes based, at least in part, on the accessibility of the Posted Laws on the UpCodes service.

### **COUNT I**

#### **DECLARATORY JUDGMENT OF NO COPYRIGHT INFRINGEMENT**

22. UpCodes incorporates herein by reference the contents of each of the preceding paragraphs.

23. The inclusion of the Posted Laws on UpCodes does not infringe any copyright of ICC because the text of every law constitutes a fact which cannot be accurately expressed any other way, and thus merges with any expression contained in that text.

24. The inclusion of the Posted Laws on UpCodes does not infringe any copyright of ICC because the Posted Laws constitute scenes a faire.

25. The inclusion of the Posted Laws on UpCodes does not infringe any copyright of ICC because the use in question constitutes fair use.

26. ICC lacks a valid copyright interest in the Posted Laws because the text of every law is in the public domain.

27. ICC lacks a valid copyright interest in the Posted Laws because ICC is not an author of the Posted Laws.

28. UpCodes is entitled to a judicial declaration that the inclusion of the Posted Laws on UpCodes does not infringe any copyright of ICC.

**PRAYER FOR RELIEF**

WHEREFORE, UpCodes prays that a judgment be entered against ICC as follows:

- a. That the Court declare that UpCodes is not liable for copyright infringement arising out of the inclusion of the Posted Laws on UpCodes;
- b. That the Court declare that ICC lacks a valid copyright in any portion of the Posted Laws;
- c. That the Court award UpCodes costs of suit, including reasonable attorneys' fees under the Copyright Act; and
- d. That the Court grant such further relief it considers just and proper.

Dated: October 19, 2017

DURIE TANGRI LLP

By: /s/ Joseph C. Gratz  
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**CERTIFICATE OF SERVICE**

I certify that all counsel of record is being served on October 19, 2017 with a copy of this document via the Court's CM/ECF system.

/s/ Joseph C. Gratz  
JOSEPH C. GRATZ